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266 NLRB No. 188

D--9930
Middletown, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STAMBAUGH'S AIR SERVICE, INC.

and

Case 4--CA--13373

INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE
WORKERS, AFL--CIO

DECISION AND ORDER

Upon a charge filed on 2 December 1982 by International Association of Machinists and Aerospace Workers, AFL--CIO, herein called the Union, and duly served on Stambaugh's Air Service, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 4, issued a complaint on 13 July 1983 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on 8 September 1982, following a Board

266 NLRB No. 188

election in Case 4--RC--14673, the Union ¹ was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;² and that, commencing on or about 28 October 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On 7 March 1983 Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On 7 March 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 10 March 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a motion to dismiss and a memorandum in opposition to counsel for the General Counsel's Motion for Summary Judgment and in support of the Employer's motion to dismiss.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations

¹ Local Lodge 1776 of the Union was selected as the exclusive collective-bargaining representative.

² Official notice is taken of the record in the representation proceeding, Case 4--RC--14673, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, its opposition to the Motion for Summary Judgment, and its motion to dismiss, Respondent admits the Union's request for bargaining and its refusal to bargain, but attacks the Union's certification in the underlying representation proceeding. Respondent contends, in essence, that the Certification of Representative is void because the Hearing Officer and the Board failed to fully dispose of objections regarding the Region's allegedly improper election procedures for the foreign language voters. Counsel for the General Counsel contends that all matters raised by Respondent were litigated in the underlying representation hearing. We agree.

Review of the record herein, including the record in Case 4--RC--14673, reveals that Respondent's objections to the election included, inter alia, the allegation that the Region violated established election procedures regarding foreign language voters by failing to provide bilingual ballots or a translator for Vietnamese voters. On 9 April 1982 Hearing Officer James F. Small issued a Report on Objections recommending that all the objections be overruled. The report includes a specific discussion and rejection of Respondent's objection based on the absence of a translator and the failure to provide bilingual ballots. The Board adopted the Hearing Officer's finding and

recommendation to overrule the objections in their entirety on 8 September 1982 in its Decision and Certification of Representative. It thus appears that Respondent is attempting in this proceeding to relitigate issues fully litigated and determined in the representation proceeding.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.³

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.⁴

On the basis of the entire record, the Board makes the following:

³ See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

⁴ For the same reasons, we deny Respondent's motion to dismiss and its alternative request for hearing.

Findings of Fact

I. The Business of Respondent

Respondent is a Pennsylvania corporation engaged in the performance of maintenance and service on aircraft at its Harrisburg International Airport facility in Middletown, Pennsylvania. During the 12-month period preceding the issuance of the complaint, a representative period, Respondent, in the course and conduct of its operations, purchased and received at the above-mentioned facility products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

International Association of Machinists and Aerospace Workers, AFL--CIO, and Local Lodge 1776, International Association of Machinists and Aerospace Workers, AFL--CIO, are labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

Included: All full-time employees classified as laborers, janitors, leadmen, quality control inspectors, material control, flight line, engine shop, hydraulic shop, electric shop, egress shop, general plant, sheet metal, ground power and maintenance employees.

Excluded: All office clericals, part-time employees, pilots, co-pilots, watchmen, guards and supervisors as defined in the Act.

2. The certification

On 28 May 1981 a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 4, designated Local Lodge 1776 of the Union as their representative for the purpose of collective bargaining with Respondent.

Local Lodge 1776 of the Union was certified as the collective-bargaining representative of the employees in said unit on 8 September 1982, and it continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about 19 October 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with Local Lodge 1776 of the Union as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about 28 October 1982, and

continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with Local Lodge 1776 of the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since 28 October 1982, and at all times thereafter, refused to bargain collectively with Local Lodge 1776 of the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.⁵

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist

⁵ Chairman Dotson did not participate in the original Board decision wherein the Board adopted the Hearing Officer's finding and recommendation to overrule the objections of the Employer. Even though had he been on the panel his decision would have been different from the Board, Chairman Dotson feels compelled to approve the granting of the summary judgment at this stage of the proceedings.

therefrom, and, upon request, bargain collectively with Local Lodge 1776 of the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Stambaugh's Air Service, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, AFL--CIO, and Local Lodge 1776, International Association of Machinists and Aerospace Workers, AFL--CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. All full-time employees classified as laborers, janitors, leadmen, quality control inspectors, material control, flight

line, engine shop, hydraulic shop, electric shop, egress shop, general plant, sheet metal, ground power and maintenance employees at its Harrisburg International Airport facility; excluding all office clericals, part-time employees, pilots, co-pilots, watchmen, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 8 September 1982 Local Lodge 1776, International Association of Machinists and Aerospace Workers, AFL--CIO, has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about 28 October 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Stambaugh's Air Service, Inc., Middletown, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local Lodge 1776, International Association of Machinists and Aerospace Workers, AFL--CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

Included: All full-time employees classified as laborers, janitors, leadmen, quality control inspectors, material control, flight line, engine shop, hydraulic shop, electric shop, egress shop, general plant, sheet metal, ground power and maintenance employees.

Excluded: All office clericals, part-time employees, pilots, co-pilots, watchmen, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Harrisburg International Airport facility in Middletown, Pennsylvania, copies of the attached notice marked "'Appendix.'"⁶ Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

7 July 1983

Donald L. Dotson, Chairman

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local Lodge 1776, International Association of Machinists and Aerospace Workers, AFL--CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

Included: All full-time employees classified as laborers, janitors, leadmen, quality control inspectors, material control, flight line, engine shop, hydraulic shop, electric shop, egress shop, general plant, sheet metal, ground power and maintenance employees.

Excluded: All office clericals, part-time employees, pilots, co-pilots, watchmen, guards and supervisors as defined in the Act.

STAMBAUGH'S AIR SERVICE, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, One Independence Mall, Seventh Floor, 615 Chestnut Street, Philadelphia, Pennsylvania 19106, Telephone 215--597--7643.